

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANIEL GOLDEN and TRACY LOCKE,

Plaintiffs,

v.

NEW JERSEY INSTITUTE OF
TECHNOLOGY and CLARA WILLIAMS, in
her capacity as Custodian of Records for the
New Jersey Institute of Technology,

*Defendants/Third-Party
Plaintiffs/Third-Party Defendants,*

v.

FEDERAL BUREAU OF INVESTIGATION,

*Third-Party Defendant/
Third-Party Plaintiff.*

HON. MADELINE C. ARLEO

Civ Action No.
2:15-cv-08559-MCA-LDW

PARTIES' JOINT STATUS REPORT

JOINT STATUS REPORT

Plaintiffs Daniel Golden and Tracy Locke (collectively, "Plaintiffs"), defendants/third-party plaintiffs/third-party defendants the New Jersey Institute of Technology and Clara Williams, in her capacity as its Custodian of Records (collectively, "NJIT"), and third-party defendant/third-party plaintiff Federal Bureau of Investigation ("FBI") submit this joint status report pursuant to the Court's February 17, 2016 Scheduling Order.

Following the filing of the FBI's Counterclaim for Declaratory and Injunctive Relief on February 18, 2016, all parties met and conferred on February 22, 2016. During this meeting the FBI informed the parties that it has in its possession approximately 6,000 pages of documents identified by NJIT as responsive to Plaintiffs' New Jersey Open Public Records Act, N.J.S.A.

47:A-1 *et seq.*, (“OPRA”) requests. The FBI further informed the parties that after an initial review of these documents, it is the FBI’s position that, of those 6,000 pages of documents, approximately 4,000 pages “are federal records, controlled by the FBI, and not subject to public disclosure under [OPRA],” regardless of whether or not they are subject to any exemption(s). FBI Counterclaim (ECF No. 23) ¶ 1; *see also id.* at ¶¶ 29–38. The FBI informed the parties that it plans to treat the remaining 2,000 pages as a request to consult from NJIT. The FBI informed the parties that it has started reviewing these approximately 2,000 pages of documents and will apply redactions to portions of these documents it believes are exempt from disclosure under OPRA, the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Privacy Act of 1974, 5 U.S.C. § 552a (“Privacy Act”). *See, e.g., id.* ¶ 1. After applying redactions the FBI will then send the documents back to NJIT. The FBI informed the parties that it is processing the approximately 2,000 pages of documents at a rate of 500 pages per month.

Accordingly, the FBI proposed that the parties stay any and all court deadlines until it has processed 1,500 pages of these approximately 2,000 pages of documents. In making this proposal, the FBI suggested that following its consult from NJIT, the parties may be able to narrow the issues for resolution by the Court.

On February 25, 2016, counsel for Plaintiffs and counsel for the FBI again met and conferred to discuss the FBI’s proposal. Plaintiffs’ counsel stated that in light of Plaintiffs’ upcoming publication deadlines for Mr. Golden’s forthcoming book, Plaintiffs are eager to obtain as many records responsive to their OPRA requests as quickly as possible. Accordingly, and in the interest of, at a minimum, narrowing the issues for resolution by the Court, Plaintiffs agree to the FBI’s proposal. All parties acknowledge that, by so agreeing, Plaintiffs do not concede and do not agree with, *inter alia*, the FBI’s position that the remaining approximately

4,000 pages of documents responsive to Plaintiffs' OPRA requests are not subject to OPRA, and reserve all rights.

NJIT also agrees to the FBI's proposal.

Accordingly, the parties jointly propose a stay of all deadlines, as determined by the Federal Rules of Civil Procedure and the Court's Local Rules, for the filing of any and all responsive pleadings or motions in connection with the FBI's Counterclaim, and for any and all other pleadings or motions that may be filed in this matter, until June 15, 2016. FBI and NJIT will complete the processing and production of non-exempt, responsive information to Plaintiffs of no fewer than 1,500 of the 2,000 pages of responsive documents discussed above on or before June 1, 2016. Plaintiffs and NJIT retain the right to respond to the FBI's Counterclaim, by Answer, Motion to Dismiss, or otherwise, after expiration of the stay.

After June 1, 2016 the parties will again meet and confer to discuss the status of production and any issues which remain in the case. Thereafter, on or before June 15, 2016, the parties will submit another joint status report updating the Court on the status of production, informing the Court of any issues which remain in the case, and proposing a briefing schedule, if necessary.

Dated: February 29, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

PAUL J. FISHMAN
United States Attorney

JACQUELINE COLEMAN SNEAD
Assistant Branch Director

/s/ Andrew E. Carmichael
ANDREW E. CARMICHAEL
Trial Attorney
VA Bar No. 76578

United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W., Rm.7218
Washington, D.C. 20530
Tel: (202) 514-3346
Fax: (202) 305 2685
Email: andrew.e.carmichael@usdoj.gov

/s/ Christopher D. Amore
CHRISTOPHER D. AMORE
Assistant U.S. Attorney
U.S. Attorney's Office
District of New Jersey
970 Broad Street, Suite 700
Newark, New Jersey 07102
Tel: (973) 645-2757
Fax: (973) 297-2010
Email: Christopher.amore@usdoj.gov

*Attorneys for the Federal
Bureau of Investigation*

/s/ Bruce S. Rosen
BRUCE S. ROSEN
McCUSKER, ANSELM, ROSEN &
CARVELLI, P.C.
210 Park Ave., Suite 301
Florham Park, NJ 07932
Tel: (973) 635-6300
Fax: (973) 635-6363
brosen@marc-law.com
Counsel of Record for Plaintiffs

Katie Townsend
Adam A. Marshall
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1250
Washington, DC 20005
Tel: (202) 795-9300
Fax: (202) 795-9310
ktownsend@rcfp.org
amarshall@rcfp.org

Attorneys for Plaintiffs

/s/ Gary Potters
GARY POTTERS
POTTERS & DELLA PIETRA LLP
100 Passiac Ave
Fairfield, NJ 07004
Tel: (973) 575-5240
gpotters@pdplawfirm.com

*Attorney for Defendants/Third-Party
Plaintiffs/Third-Party Defendants New Jersey
Institute of Technology and Clara Williams*